Petition

NO. 83-752

In the Supreme Court of the United States

OCTOBER TERM, 1983

TRANSOCEAN CONTRACTORS, INC., ET AL

Petitioner

VERSUS

NORRIS REED

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Petitioner submits that its application for a Writ of Certiorari presents the following question for review.

Whether the rule applied by the Fifth Circuit, as adopted in *Bertrand v. International Mooring & Marine, Inc.*, 700 F.2d 240 (5th Cir. 1983), for determining seaman status under the Jones Act fails to consider the essential element of whether the individual worker's duties aided in the navigation of the vessel on which he was working, contrary to this Court's decision in *South Chicago Coal & Dock Company v. Bassett*, 309 US 251 (1940), and in conflict with the Third Circuit decision in *Simko v. C&C Marine Maintenance Company*, 594 F.2d 960 (3rd Cir. 1978), *cert. denied* 444 US 833 (1979).

LIST OF PARTIES

The following are the parties to this proceeding in the United States Court of Appeals for the Fifth Circuit.

Norris Reed, plaintiff-appellant

Transocean Contractors, Inc., defendant-appellee

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PETITION FOR WRIT OF CERTIORARI

DECISIONS BELOW

The United States District Court for the Western District of Louisiana, Opelousas Division, did not prepare a written opinion, but the judgment of the Court is attached. The opinion of the United States Court of Appeals for the Fifth Circuit is unreported, but is attached in the Appendix.

JURISDICTION

Petitioner seeks a writ to the United States Court of Appeals for the Fifth Circuit to review its decision and order filed July 27, 1983. This Court has jurisdiction pursuant to 28 U.S.C. §1254(1).

STATUTES INVOLVED

This petition raises issues under the Jones Act, 46 U.S.C. §688, the Longshoremen's & Harbor Workers' Compensation Act, 33 U.S.C. §§901-50, and the Outer Continental Shelf Lands Act, 43 U.S.C. §1333.

This petition specifically raises issues under the following provisions of the Jones Act:

Recovery for Injury to or Death of Seaman

> Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable.

This petition raises issues under the following provisions of the United States Longshoremen's & Harbor Workers' Compensation Act:

Coverage

> (a) Compensation shall be payable under this Chapter in respect of disability or death of an employee, but only if the disability or death results from an injury occurring upon the

navigable waters of the United States (including any adjoining pier, wharf, dry-dock, terminal, buildingway, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel. No compensation shall be payable in respect of the disability or death of—(1) a master or member of a crew of any vessel, or any person engaged by the master to load or unload or repair any small vessel under 18 tons net...

33 U.S.C. §903

This petition also raises issues under the following provisions of the Outer Continental Shelf Lands Act:

Longshoremen's & Harbor Workers' Compensation Act Applicable; Definitions

(b) With respect to disability or death of an employee resulting from any injury occurring as the result of operations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing, or transporting by pipeline the natural resources, or involving rights to the natural resources, of the subsoil and seabed of the Outer Continental Shelf, compensation shall be payable under the provisions of the Longshoremen's & Harbor Workers' Compensation Act. For the purpose of the extension of the provisions of the Longshoremen's & Harbor Workers' Compensation Act under this section—(1) the term "employee" does not include a master or member of a crew of any vessel, or an officer or employee of the United States or any agency thereof or of any state or foreign government, or of any political subdivision thereof...

STATEMENT OF THE CASE

This case arose out of an accident which occurred on or about April 2, 1980. The Plaintiff, Norris Reed, was an anchor-handling superintendent employed by Transocean Contractors, Inc. (hereinafter referred to as "Transocean"). He was a member of an anchor-handling crew which was preparing to place anchors connected to a semi-submersible rig, the Diamond M New Era.

As a result of the accident, a suit was filed by Norris Reed against Transocean, in the United States District Court for the Western District of Louisiana, seeking damages under the Jones Act, 46 U.S.C. §688. Transocean moved for summary judgment claiming that Norris Reed was not a seaman as a matter of law.

On September 15, 1981, the District Court granted defendants' Motion for Summary Judgment, holding that Norris Reed was a longshoreman and not a Jones Act seaman. Written reasons were not assigned. A Rule 54(b) judgment was executed July 1, 1982 in conformity with the Court's ruling on Transocean's Motion for Summary Judgment. Norris Reed appealed. The Fifth Circuit Court of Appeal rendered a decision involving similar facts in a case reported under the title *Bertrand v. International Mooring & Marine, Inc.*, 700 F.2d 240 (5th Cir. 1983), after the appeal of Norris Reed was taken. On July 27, 1983, the Fifth Circuit reversed and remanded the case for further proceedings in light of its decision in *Bertrand (supra)*. Transocean is now petitioning for a Writ of Certiorari.

FACTS

Transocean is an oilfield service corporation which

engages in several oil related services including the anchoring and mooring of offshore drilling barges and vessels. On April 2, 1980, the plaintiff, Norris Reed, was employed as an anchor-handling superintendent by Transocean. The typical anchor-handling crew consists of a superintendent, an operator, a welder, a leaderman, and two or three riggers. The crew's work is ordinarily performed from vessels which are provided by customers of Transocean; the anchor-handling crew would work aboard whatever vessel the customer had designated for the job. These vessels were generally offshore oil service vessels which were hired by various customers to perform services such as delivering personnel, equipment, food and substances required to maintain the offshore facilities in operation. These vessels carry their own regular crew which consisted of a master, a cook, deckhands and mechanics. When anchor-handling services were required by a customer of Transocean, such a vessel under contract to Transocean's customer, and not under contract to Transocean, would be pressed into service in order to carry the anchor-handling crew of Transocean out to the location where their special service was to be performed, and once on location, to act as a temporary platform from which their services were to be performed.

The anchor-handling crew members remained aboard this work vessel for the duration of their work assignment, which ranged anywhere from several hours to several days. The anchor handlers were assigned to work on the vessels on a completely random basis, were on each vessel for a limited time and were aboard each vessel for the limited purpose of performing a single task, that of lowering or raising an anchor belonging, not to the vessel upon which they worked, but to a semi-submersible drilling rig, neither owned, operated nor chartered by Transocean.

At the time of this accident, the plaintiff was the superintendent of the anchor-handling crew, and was aboard the Gulf Fleet #37, a work boat vessel owned by Gulf Fleet Marine Corporation. Prior to boarding the Gulf Fleet #37, the plaintiff and his crew were unaware of which vessel they would be boarding, knowing only that they and their equipment would be transported to the location where their services were to be performed by a vessel arranged, not by Transocean, but by Transocean's customer. Upon arrival at the work location, while aboard the Gulf Fleet #37, Mr. Reed was taken aboard the Diamond M New Era, the semi-submersible drilling vessel whose anchors were to be placed by the Transocean crew. After approximately 30 to 60 minutes aboard the Diamond M New Era for the purpose of discussing where the anchors would be placed, Mr. Reed was transferred back to the Gulf Fleet #37 by means of a personnel basket. It was during the course of this transfer from the semi-submersible drilling vessel to the Gulf Fleet #37 vessel, that the accident occurred.

Prior to this particular job aboard the vessel, Gulf Fleet #37, Mr. Reed had worked aboard a number of similar vessels. Affidavits and work summaries pertinent to Mr. Reed indicate quite clearly that Mr. Reed always worked from different vessels when performing his work, that these vessels were not owned, chartered or operated by his employer, Transocean, that his reassignment to any particular vessel (if it occurred) was fortuitous in nature and that his work on any particular vessel was for a short period of time and not permanent in nature. Specifically, the work record of Mr. Reed shows a pattern of working aboard some 20 to 23 different vessels during his period of employment with Transocean, remaining aboard each vessel for anywhere from several hours to less than one week. By Mr. Reed's own testimony, the actual work of

placing the anchors takes approximately eight hours to accomplish. It is uncontradicted that Mr. Reed's return to this particular vessel for purposes of conducting anchor-handling services therefrom, would be totally fortuitous in nature. Once the work of setting out the anchors is completed, the work vessel, provided by Transocean's customers, would continue on with its normal duties of servicing the offshore facilities.

Mr. Reed points out that the vessels that he and his crew board for purposes of completing his work, are indeed supply boats, vessels customarily used to transfer supplies from land to offshore locations. When he and his crew boards such a vessel, as was done on this particular occasion, he and his crew are not required to drive the vessel, moor it, wash it down, clean it, paint it, or do anything else in connection with the operation or navigation of the vessel. The vessel is used solely as a temporary platform from which their specialized and limited service is performed. Upon completion of this specialized task, the anchor handling crew leaves the vessel, this job being finished. However, the vessel and its crew continue the job of servicing the offshore facilities.

ARGUMENT

The Jones Act provides a cause of action for "any seaman who shall suffer personal injury in the course of his employment" 46 U.S.C. §688. The Longshoremen's and Harbor Workers Compensation Act, on the other hand, restricts the benefits of the Jones Act to a master or a member of a crew of any vessel. The issue raised by this petition is whether the rule applied by the Fifth Circuit for determining the status of Norris Reed (anchor handler) under the Jones Act improperly omitted consideration of

whether or not the anchor handler's duties aided in the navigation of the vessel upon which he worked, contrary to the holding in *South Chicago Coal & Dock Company v. Bassett*, 309 US 251 (1940), and in conflict with the Third Circuit decision of *Simko v. C&C Marine Maintenance Company*, 594 F.2d 960 (3rd Cir. 1979), *cert. den.*, 444 US 833 (1979).

The District Court granted summary judgment on the issue of Jones Act status in favor of Transocean, concluding that Norris Reed was a longshoreman. Written reasons for judgment were not given by the District Court and therefore the actual basis for the decision is unknown. However, shortly before the summary judgment was heard in this matter by the District Court, that Court decided a similar motion in the matter entitled *Deborah Bertrand v. International Mooring & Marine* (Civil Action #800569). Therein, the District Court found that none of the plaintiffs had a more or less permanent connection with the particular vessel or with a specific group of vessels. The Court therefore, concluded that to be a member of the crew of numerous vessels would require that the group or fleet act together under one control or gather closely together and form a recognizable unit or fleet. In support of this conclusion of law, the Court referred to the following language in *Guidry v. Continental Oil Company*, 640 F.2d 523 (5th Cir. 1981), in which the Fifth Circuit made it clear that the relationship between the individual and an identifiable vessel or group of vessels must be substantial in point and time, not spasmotic:

> The key is that there must be a relationship between the claimant and a specific vessel or identifiable groups of vessels.

> Guidry's deposition was quite explicit. His assignment to any particular structure was random. At no time was he assigned to work on a particular rig on a continuing or regular basis. See, e.g. Stokes v. B.T. Oilfield Services, Inc., 617 F.2d 1205, 1207 (5th Cir. 1980); Kenner v. Transworld Drilling Co., 468 F.2d 729, 732 (5th Cir. 1972). Indeed, of the 40 different rigs Guidry was assigned to during his career, 13 were non-vessel fixed platforms, 7 were on land, and of the remaining 20 movable rigs, he was on 13 only once and never did he return to a specific rig more than 3 times.

The *Bertrand (supra)* decision was appealed to the Fifth Circuit, where it was overruled, using what is referred to as the McKie test,[1] as modified by the so-called Robison test[2]. The McKie test provides as follows:

> The essential and decisive elements of the definition of a "member of a crew" are that the ship be in navigation; that there be a more or less permanent connection with the ship; and that the worker be aboard primarily to aid in navigation.[3]

The Robison test as applied by the Fifth Circuit in the *Bertrand (supra)* decision permits a factual finding of seaman status under the Jones Act:

> (1) if there is evidence that the injured workman was assigned permanently to a vessel...or performed a substantial part of his work on the

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[1] *McKie v. Diamond Marine Co.*, 204 F.2d 132 (5th Cir. 1953).

[2] *Offshore Co. v. Robison*, 266 F.2d 769 (5th Cir. 1959).

[3] *McKie v. Diamond Marine Co., supra*, p. 136.

> vessel; and (2) if the capacity in which he was employed or the duties which he performed contributed to the function of the vessel or to the accomplishment of its mission, or the operation or welfare of the vessel in terms of its maintenance during its movement or during anchorage for its future trips.[4]

With respect to this petition, the pertinent part of the Fifth Circuit's holding in *Bertrand (supra)*, appears in the following passage:

> The two criteria of Robison are conjunctive. E.G., Davis v. Hill Engineering, Inc., 549 F.2d 314, 328 (5th Cir. 1977). Plaintiffs satisfy the second part because the performance of the anchorhandlers' duties clearly contributed to the accomplishment of the vessel's mission, the relocation of the drilling barge.[5]

It is obvious that the Fifth Circuit applied its holding in *Bertrand (supra)* to the facts of the instant case. In this respect, the test applied by the Fifth Circuit and consequently, the conclusion reached with respect to determining status under the Jones Act in the instant case is contrary to the test applied by the Supreme Court in *Bassett (supra)* and the Third Circuit decision in *Simko (supra)*.

In *Bassett*, an employee of South Chicago Coal & Dock Company was drowned while serving his employer on a vessel in navigable waters of the United States. The issue was whether or not the deceased's widow was entitled to

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[4] *Bertrand v. International Mooring & Marine, Inc.*, 700 F.2d 240, 244 (5th Cir. 1983).

[5] *Id.*, p. 246.

benefits under the Longshoremen's and Harbor Workers' Compensation Act or whether she was excluded from the benefit program because her decedent had been a member of the crew of the vessel upon which he had worked. The Court of Appeals described the worker's chief task as that of:

> ...facilitating the flow of coal from his boat to the vessel being fueled—removing obstructions to the flow with a stick. He performed such additional tasks as throwing the ship's rope and releasing or making the boat fast. He performed no navigational duties. He occasionally did some cleaning of the boat. He did not work while the boat was enroute from the dock to the vessel to be fueled.[6]

The Court of Appeals also thought it significant that:

> His only duty relating to navigation was the incidental task of throwing the ship's line; that his primary duty was to free the coal if it stuck in the hopper while being discharged into the fuel of the vessel while both boats were at rest; that he had no duties while the boat was in motion...[7]

In affirming the judgment of the Court of Appeals, this Court made the following comments concerning the Longshoremen's and Harbor Workers' Compensation Act:

> This Act, as we have seen, was to provide compensation for a class of employees at work on a vessel in navigable waters who, although they

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[6] *South Chicago Coal and Dock Co. v. Bassett*, 309 U.S. 251, 255 (1940).

[7] *Id.*

> might be classed as seamen (International Stevedoring Co. v. Haverty, supra), were still regarded as distinct from members of a 'crew'. They were persons serving on vessels, to be sure, but their service was that of laborers, of the sort performed by longshoremen and harbor workers and thus distinguished from those employees on the vessel who are naturally and primarily onboard to aid in her navigation...These duties, as the Court of Appeals said, did not pertain to navigation, aside from the incidental task of throwing the ship's rope or making the boat fast, a service of the sort which could readily be performed or aided by a harbor worker...[8]

The factual parallels between *Bassett, supra,* and this case are striking. In both cases plaintiffs were aboard their respective vessels to perform a special mission unrelated to the navigational duties of the vessel from which each worked. In both cases the vessel's special mission was that of helping another vessel to which the plaintiffs were not assigned. In both cases plaintiffs performed incidental tasks of throwing the ship's line or cleaning the boat. In both cases plaintiffs had no duties while the vessel was underway. In both cases plaintiffs would fall under the provisions of the LHWCA if not found to be crewmembers. In neither case were the plaintiffs "naturally and primarily onboard to aid in navigation of the vessel upon which they worked."

The results in the instant case is different from the results in *Bassett,* because the Fifth Circuit applied a different test, as adopted in *Bertrand (supra),* which conflicts with the *Bassett* test. In *Bassett,* the test applied was whether or not the employee was on the vessel naturally

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[8] *Id.,* p. 260

and primarily to aid in her navigation. In contrast, the test applied by the Fifth Circuit in *Bertrand*, and adopted in the instant case, was whether or not "the capacity in which the employees were employed, or the duties which they performed contributed to the function of the vessel or to the accomplishment of its mission, or to the operation or welfare of the vessel in terms of its maintenance during its movement or during anchorage for its further trips".

The Fifth Circuit test applied to the instant litigation, by adopting *Bertrand (supra)*, is substantially broader than the test applied by this Court in *Bassett* and, therefore, necessarily produces incompatible results in similar factual situations, thereby jeopardizing the desired goal of uniformity of federal law.

Not surprisingly, the same disparity of tests and results exist between the Fifth Circuit and the Third Circuit, as evidenced by the opinion in *Simko v. C&C Marine Co.*, 594 F.2d 960 (3rd Cir. 1978), *cert. den.*, 444 U.S. 833, (1979). In *Simko* the plaintiff was hired by C&C Marine Maintenance Company as a laborer. He was assigned the job of assisting in the cleaning and minor repair of barges brought to C&C's facilities along the Ohio River by a variety of barge companies. During the course of cleaning one of the barges, Simko fell overboard and drowned. Again, one of the issues was whether or not Simko's widow was entitled to benefits under the Longshoremen's and Harbor Worker's Compensation Act or whether she was entitled to bring a claim under the Jones Act. In finding that the evidence presented at trial was insufficient to permit the submission of the Jones Act claim to the jury the Third Circuit said the following:

This Court has previously held that among the

"decisive elements necessary of proof in determining who is 'a member of a crew' within the meaning of the Jones Act" is a requirement "that the worker be aboard the ship primarily to aid in navigation." Griffith v. Wheeling Pittsburg Steel Corp., 521 F.2d 31, 36 (3rd Cir. 1975), cert. den., 423 U.S. 1054, 96 S.Ct. 985, 46 L.Ed.2d 643 (1976). The estate's Jones Act claim was submitted to the jury on the theory that Simko, at the time of his death, was a member of the crew of either ACBL number 2699 or C&C's crane barge, to which number 2699 was moored. However, the evidence introduced at trial could not support a jury finding that Simko was aboard either barge primarily to aid in its navigation.

Testimony introduced at trial shows that Simko was hired by C&C as a laborer and that his function was to assist in the cleaning of barges moored to C&C's crane barge. He shoveled debris from their interiors, squirted the decks with waterhoses, and helped in carrying pumps and other equipment used in the cleaning operations...in Griffith this Court held that a worker injured while engaged in loading a barge at a steel mill along the Ohio River had not been aboard that barge primarily to aid in its navigation, and thus we affirmed the District Court's entry of summary judgment against the plaintiff on a Jones Act claim...the focus applied by this Court in Griffith to the nature of the duties performed by the putative Jones Act claimant is consistent with the leading Supreme Court opinion in this area, Senko v. LaCrosse Dredging Corp., 352 U.S. 370, 77 S.Ct. 415, 1 L.Ed.2d 404 (1957).[9]

The Third Circuit held that the proper test of seaman

[9] *Simko, supra*, pp. 964-965.

status, which Simko had not met, was whether he performed *significant* navigational functions with respect to that vessel on which he worked.[10]

Again, the similarities between the plaintiff in Simko and the plaintiff in this case are that they were both on board vessels to perform non-navigable tasks with respect to the vessels on which they worked. The disparate results reached by the respective circuits in *Simko (supra)*, and in this case, underscore the importance of petitioner's application for a writ. The Third Circuit applies a test, consistent with Bassett, which emphasizes the traditional notion that seamen have something to do with navigating vessels. The Fifth Circuit has applied a test here which would give such status to longshoremen or other persons who are obviously harbor workers. The Fifth Circuit test distills to the simple proposition that a worker who spends a large percentage of his time aboard a vessel, even though he has not particular affiliation with any single vessel or identifiable group of vessels, whose work contributes to the accomplishment of the function of those vessels, is a seaman under the Jones Act. No doubt many longshoremen spent as great a percentage of their time working aboard vessels as did these anchor handlers, and there can be no doubt that the operation of loading and unloading cargo is essential to the function of the great majority of commercial vessels operating in the United States waters. There is no way to distinguish between such workers and Jones Act seamen if the test applied is the one used by the Fifth Circuit in the *Bertrand (supra)* decision and adopted in the instant litigation.

As this Court noted in *Bassett*, Congress obviously intended to draw a line of demarcation between seamen

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[10] *Id.*, p. 965.

and workers subject to the jurisdiction of the Longshoremen's and Harbor Workers' Compensation Act. The fact that this plaintiff was performing his activities on the outer continental shelf rather than in port or in a harbor does not modify that Congressional intent. In adopting the Outer Continental Shelf Lands Act, Congress specifically provided that the LHWCA should apply to injury or death of any employee resulting from operations conducted on the Outer Continental Shelf. The Fifth Circuit's decision in the instant litigation, by virtue of its adoption of *Bertrand (supra)* disregards that intent and disregards the admonition in *Bassett* that the proper distinction between seamen and harbor workers (or OCS workers) be observed. By adopting the compensation regime of the LHWCA in the Lands Acts, Congress has made generous provisions for this plaintiff, and it is neither necessary nor desirable to extend and expand the definition of a seaman under the Jones Act to achieve any worthwhile judicial objective.

CONCLUSION

This Court's decision in *Bassett (supra)* establishes a reasonable test for determining which maritime workers are crew members of a vessel, entitled to bring an action under the Jones Act, and which workers are covered under the Longshoremen's and Harbor Workers' Compensation Act. The decision has drawn a line of demarcation between the two statutes, making them complement rather than conflict with each other, in accordance with Congressional intent. This test is based upon whether the worker is on board a vessel "naturally and primarily in aid of navigation of that vessel." The Fifth Circuit, on the other hand, has adopted a much broader test for the Jones Act which looks at whether the capacity in which the worker was employed or the duties which he performed contributed to the

function of the vessel or to the accomplishment of its mission, or to the operation or welfare of the vessel in terms of its maintenance during its movement or during anchorage for its future trips. Consequently, this case as recently decided by the Fifth Circuit, by virtue of its adoption of the *Bertrand (supra)* principles, is incompatible and irreconcilable with this Court's decision in *Bassett (supra)* as well as the Third Circuit's decision in *Simko (supra)*. The logical result of the Fifth Circuit's decision is to make a Jones Act seaman of virtually any maritime worker who is aboard a vessel for a significant amount of his total work time, so long as his work is not unrelated to the vessel's function. This defies the intent of Congress with respect to these two statutes and will only lead to disharmony. For these reasons, petitioner urges this Court to grant a Writ of Certiorari for the purpose of conforming the disparate tests which have evolved in ths area of law.

Respectfully submitted,

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Attorneys for Transocean
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am a member of the bar of this Court and that three copies of the foregoing Petition for Writ of Certiorari have been served by depositing those copies in the United States mail, postage prepaid, addressed to the following parties at the addresses indicated:

Norris Reed, through his counsel of record,
Thomas K. Regan,
Post Office Drawer 688,
Crowley, Louisiana 70526

The foregoing service was made on behalf of Transocean Contractors, Inc., on October 25, 1983.

JOEL E. GOOCH

APPENDIX "A"

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE-OPELOUSAS DIVISION

NORRIS REED

VERSUS CIVIL ACTION NO. 801456 S

DIAMOND M DRILLING COMPANY, ET AL

JUDGMENT

THIS matter came on for hearing on September 15, 1981, on a Motion for Summary Judgment filed on behalf of Transocean Contractors, Inc., seeking a declaration that Norris Reed was, as a matter of law and fact, a Longshoreman and not a seaman, and the Court, after hearing oral arguments, in reviewing the pleadings, briefs, and affidavits filed by the parties herein, concur and grant the Motion of Transocean Contractors, Inc., and thereby dismiss Transocean Contractors, Inc. from this lawsuit; additionally, this Court finds that there is no just reason for delay in the entry of final judgment and therefore,

IT IS ORDERED ADJUDGED AND DECREED that the cause of action of Norris Reed as against Transocean Contractors, Inc. be dismissed and that final judgment be entered as to the dismissal of Transocean Contractors, Inc., within the meaning of Rule 54(b).

SIGNED this 1st day of July, 1982, at Opelousas, Louisiana.

/s/ John Shaw
JUDGE

APPENDIX "B"

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 82-3502
Summary Calendar

NORRIS REED,

Plaintiff-Appellant,

versus

DIAMOND M DRILLING COMPANY,

Defendant,

and

TRANSOCEAN CONTRACTORS, INC.

Defendant-Appellee.

Appeal from the United States District Court for the Western District of Louisiana

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(July 27, 1983)

Before GEE, RANDALL, and TATE, Circuit Judges.

PER CURIAM:

The judgment of the districat court is vacated and the cause is remanded to that court for further consideration in the light of Bertrand v. International Mooring & Marine, Inc., 700 F.2d 240 (5th Cir. 1983).

VACATED AND REMANDED.

APPENDIX "C"

STATE OF LOUISIANA AFFIDAVIT

PARISH OF ST. MARY

BEFORE ME, a Notary Public in and for the aforesaid Parish and State, did appeal IVAN JONES, who, after being duly sworn, did depose and state:

"That he is employed by Transocean Contractors, Inc., as Manager of the Anchor Handling Division, and as Manager of said Division is in charge of finalizing the various jobs that Transocean Contractors, Inc. performs insofar as anchor handling is concerned, and further, that he decides which crew is to be sent out on particular jobs, directs the crew to a location where the job is to be commenced and finally, is in charge of the records kept by Transocean Contractors, Inc. with respect to anchor handling, job dispatching, etc. In his capacity as Manager of the Anchor Handling Division of Transocean Contractors, Inc. and as custodian of the records pertinent to that Division's operation, the following facts are stated, based upon his personal knowledge.

That Norris Reed, in April of 1980, was an employee of Transocean Contractors, Inc., assigned to the anchor handling section of the Company. that it is the customary practice of the anchor handling section, upon procurement of a job from an Operator such as Tenneco, Mobil, Chevron, Tidex, CNG, etc., to contact various employees of the company who worked in the anchor handling section and put together a crew. The anchor handling crew for a particular job, assembled as aforesaid described, consists of various employees which will vary from job to job. There is no

specific crew in the Anchor Handling Division who customarily worked together on each and every job. But once the crew is assembled, they are directed to a location where they will board a vessel, provided by the Operator, who has requested the anchor handling services. The vessel that is boarded is not operated or leased by Transocean Contractors, Inc. Transocean Contractors, Inc. does not own or operate any workboats or anchor handling boats from which their employees provide anchor handling services. If any of the Transocean anchor handling crews board a vessel on more than one occasion, performing subsequent jobs, the boarding of that vessel again, is coincidental. Transocean Contractors, Inc., has no control over the selection of the vessel provided by the company for whom the anchor handling services are being performed.

A review of the records of Transocean Contractors, Inc., from January 26, 1980 through the date of Mr. Reed's accident reveals that Mr. Reed performed anchor handling services on thirty-five (35) occasions, as per the Attachment for a very short period of time and with the exception of a few of the vessels, all the vessels were different. In addition, Mr. Reed also performed work on stationary platforms.

While Mr. Reed was aboard any of the vessels provided by the Operator who hired Transocean to perform anchor handling services, Mr. Reed would not be required to participate in the operation or maintenance of that vessel or the vessel's navigation.

/s/

IVAN JONES

SWORN TO AND SUBSCRIBED before me this 24th day of June, 1981 at Morgan City, Louisiana.

/s/Durio J. Duplechein, Jr.
NOTARY PUBLIC

ATTACHMENT

JOB #	COMPANY	VESSEL	PERIOD
813	Tenneco	m/v San Hose Island	2/27-3/5
821	Arco-Sabine Pass	m/v Calico Jack	3/7-3/9
825	McMoran Belco Pet.	m/v Hatteras Seahorse	3/12-3/21
848	Tenneco	Aquamarine 503	4/7-4/8
851	Mobil	m/v Ionian Seahorse & Gulf Miss	4/19-5/15
867	C.A.G.C.	m/v Gulf Fleet 26	5/21-5/23
869	Arco	m/v Gulf Fleet 23	5/23-5/28
851	Mobil	m/v Ionian Seahorse & Gulf Miss 260	6/5
851	Mobil	m/v Ionian Seahorse & Gulf Mill 260	6/7
864	CNG	Platform Job	6/8-6/12
893	CNG	m/v Mark G	6/30-7/4
875	Gulf Oil	m/v Ajean Seahorse	7/7-7/11
900	Arco Sabine Pass	m/v Francois LeCleur	7/11-7/14
851	Mobil	m/v Ionian Seahorse & Gulf Miss 260	8/2-8/5
926	CNG	m/v Botruc 11	8/28-8/30
926	CNG	m/v Botruc 11	9/7-9/9
945	Atlantic Richfield	m/v Dick Ewell	9/9-9/10
952	Conoco	m/v Cayman Island	9/12-9/21
962	Shell Oil	m/v Pete Tide II	9/22-9/25
964	Tenneco	m/v Aquamarine 503	9/30-10/4
947	Mobil	m/v Banda-Sea	10/6-10/9
987	CNG	m/v Botruc 11	10/23-10/26
990	Tidex	m/v Power Tide	10/29
991	Seahorse	m/v Hatteras Seahorse	10/30-11/6